

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

Stephen Andrews and John Carpenter Appeal

Docket No. 06-04 WC

RECEIVED

JUL 03 2006

**STATE'S OBJECTION TO THE APPELLANT'S
AMENDED WITNESS LIST**

NOW COMES the State of New Hampshire Department of Environmental Services ("State"), by and through its attorneys, the Office of the Attorney General, and respectfully submits this objection to Appellant Andrews' attempt to amend his witness list. The Appellant's attempted amendment was untimely filed after the June 23, 2006 deadline for filing witness lists in anticipation of the July 12, 2006 hearing. Due to the untimely filing of Appellant Andrews amended witness list, the State requests the Council to accept its objection to such amendment and sets forth the basis for its objection as follows:

1. On April 5, 2006, the Appellants filed a notice of appeal of the State's denial of their application to waive the "no swim" provision of Env-Ws 386.61(h)(4) ("Appeal").
2. On May 8, 2006, the Water Council held a pre-hearing conference regarding the Appeal and, thereafter, issued an Order setting forth a June 23, 2006 deadline for submission of the parties' witness lists, among other documents.
3. On June 23, 2006, Appellant Stephen Andrews filed his list of witnesses as follows:
 - a.) William Daly, Utilities Manager, Town of Salem
 - b.) Paul Susca, Source Water Protection Coordinator NHDES.
4. The State did not receive any submissions from Appellant John Carpenter.
5. On June 29, 2006, the State received Appellant Andrews "Reformatted Exhibit List." Appellant Andrews included "Anderson", as well as himself, as one of the witnesses

through which he planned to introduce the following exhibits: Exhibit 25 (Cryptosporidiosis Distribution) and Bound Exhibits in the Notice of Appeal ("NOA"), NOA 11-13.

6. Appellant Andrews' inclusion of an additional witness not formerly disclosed on his witness list filed June 23, 2006 appears to be an attempt to modify his witness list past the deadline set by the Water Council for such disclosures. The State objects to Appellant Andrews or Appellant Carpenter calling an additional witness who was not listed as a witness for either party as of June 23, 2006.

7. For the foregoing reasons, the State requests the Water Council to strike witness Anderson from Appellant Andrews' amended witness list.

WHEREFORE, for the foregoing reasons, the State respectfully requests that the Water Council:

- A. Strike witness Anderson from Appellant Andrews' amended witness list;
- B. Grant such other and further relief as the Water Council may deem just and appropriate.

Respectfully submitted,

State of New Hampshire
Department of Environmental Services

By its attorneys,

Kelly A. Ayotte
Attorney General

Dated: July 3, 2006

By: 

COPY
Esther B. Piszczek
Assistant Attorney General
Office of Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301

Certificate of Service

I certify that a copy of the foregoing was mailed first class postage prepaid this 30th day of June 2006 to Mr. Stephen M. Andrews, Mr. John Carpenter, and Gordon Graham, Esq, Counsel for the Town of Salem.


COPY
Esther B. Piszczek